

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

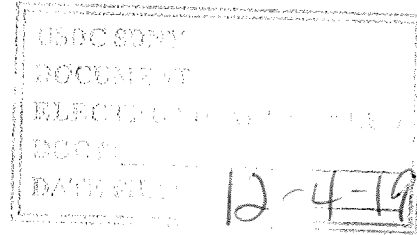
SHAWN BROOKS,

Plaintiff,

-against-

WESTCHESTER COUNTY JAIL; WARDEN  
MIDDLETON; C.O. HUGES, SHIELD # 1745;  
CAPTAIN JOHNSON; SGT. HOLLIS;  
VERONICA DIGNAM, U.S. PROBATION  
OFFICER,

Defendants.



19-CV-10901 (VB)

ORDER OF SERVICE

VINCENT L. BRICCETTI, United States District Judge:

Plaintiff, currently detained in the Orange County Jail, brings this *pro se* action under 42 U.S.C. § 1983, alleging that, while he was detained in the Westchester County Jail, Defendants violated his constitutional rights. By order dated November 27, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).<sup>1</sup>

**STANDARD OF REVIEW**

The Prison Litigation Reform Act requires that federal courts screen complaints brought by prisoners who seek relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner's IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

(2d Cir. 2007). The Court must also dismiss a complaint if the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

## DISCUSSION

### A. Westchester County Jail

Plaintiff’s claims against the Westchester County Jail must also be dismissed. Section 1983 provides that an action may be maintained against a “person” who has deprived another of

rights under the “Constitution and Laws.” 42 U.S.C. § 1983. The Westchester County Jail is not a “person” within the meaning of § 1983. *See generally Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989) (state is not a “person” for the purpose of § 1983 claims); *Zuckerman v. Appellate Div., Second Dep’t Supreme Court*, 421 F.2d 625, 626 (2d Cir. 1970) (court not a “person” within the meaning of 42 U.S.C. § 1983); *Whitley v. Westchester Cnty. Corr. Fac. Admin.*, No. 97-CV-420 (SS), 1997 WL 659100, at \*7 (S.D.N.Y. Oct. 22, 1997) (correctional facility or jail not a “person” within the meaning of § 1983). Therefore, Plaintiff’s claim against the Westchester County Jail must be dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

**B. Service on Captain Johnson; Sgt. Hollis; Warden Middleton; Sgt. Huges, Shield # 1745; and Veronica Dignam, U.S. Probation Officer**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service

automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Captain Johnson; Sgt. Hollis; Warden Middleton; Sgt. Huges, Shield # 1745; and Veronica Dignam, U.S. Probation Officer, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these Defendants. Because Defendant Veronica Dignam, U.S. Probation Officer, is a federal Defendant, the Clerk of Court is further instructed to mark the box on the USM-285 form labeled “Check for service on U.S.A.” The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these Defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

### **CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Court dismisses Plaintiff’s claims against the Westchester County Jail. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).


The Clerk of Court is instructed to issue summonses, complete the USM-285 forms with the addresses for Captain Johnson; Sgt. Hollis; Warden Middleton; Sgt. Huges, Shield # 1745; and Veronica Dignam, U.S. Probation Officer, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf.*

*Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 3, 2019  
White Plains, New York

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

VINCENT L. BRICCETTI  
United States District Judge

## **DEFENDANTS AND SERVICE ADDRESSES**

1. Warden Middleton  
Westchester County Jail  
10 Woods Road  
Valhalla, New York 10595
2. Captain Johnson  
Westchester County Jail  
10 Woods Road  
Valhalla, New York 10595
3. C.O. Huges, Shield # 1745  
Westchester County Jail  
10 Woods Road  
Valhalla, New York 10595
4. Sgt. Hollis  
Westchester County Jail  
10 Woods Road  
Valhalla, New York 10595
5. Veronica Dignam  
U.S. Probation Officer  
300 Quarropas Street  
White Plains, New York 10601